

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-8 are presently active in this case. The present Amendment amends Claims 1-8.

The outstanding Office Action provisionally rejected the claims on the ground of nonstatutory obviousness-type double patenting over the claims of copending U.S. Application Serial No. 10/287,912. Claims 1-5 and 7 were rejected under 35 U.S.C. § 102(e) as anticipated by Katsube et al. (U.S. Patent No. 6,188,689). Claim 6 was rejected under 35 U.S.C. § 103(a) as unpatentable over Katsube et al. in view of Lyon (U.S. Patent No. 6,721,273). Claim 8 was rejected under 35 U.S.C. § 103(a) as unpatentable over Katsube et al. in view of Imanaka et al. (U.S. Patent No. 6,282,669).

In response to the provisional double patenting rejection over the claims of copending Application Serial No. 10/287,912, Applicant respectfully traverses the rejection. However, in the spirit of moving prosecution forward for the present application, a Terminal Disclaimer is filed herewith thereby overcoming the rejection. Applicant notes that the filing of a Terminal Disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection.¹ Further, the currently amended claims of the present application have a different scope than that of the claims of copending Application Serial No. 10/287,912 because the former are not drafted in “means-plus-function” language while the latter use “means-plus-function” language. See MPEP 2181.

¹ *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991), indicating that the “filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.”

In response to the rejections of the claims under 35 U.S.C. § 102(b) and 35 U.S.C. §103(a), Claim 1 is amended to further define the claimed network. Claims 1-8 are also amended to correct noted informalities. In light of the present amendment, Applicant respectfully requests reconsideration of the outstanding rejections and traverses the rejections, as discussed next.

Claim 1, as amended, requires a control to segregate between virtual links and to allocate a passband for each virtual link, *the passband of a virtual link being equal to: (packet size)/(minimum inter-packet time), the sum of passbands of the virtual links in transmission being less than about 5 Mbits/s. Further, each switch is configured to discard incoming packets if, for each incoming virtual link, one or more predetermined time constraints for the incoming packets are violated.* In addition, Claim 1 now requires that *each destination equipment is configured to subscribe for an application in reception to at least one virtual link and to make the segregation between virtual links to the application for the duration of the application.*²

The Katsube et al. patent fails to disclose the above-noted features of amended Claim 1. Therefore, the prior art fails to disclose every feature recited in Applicant's claims, so that Claims 1-5 and 7 are not anticipated by the prior art. Accordingly, Applicant respectfully traverses, and requests reconsideration of, the 35 U.S.C. § 102 rejection based on the Katsube et al. patent.³

Further, The Lyon and Imanaka et al. patents do not remedy the noted deficiency of the Katsube et al. patent. In addition, there is no apparent reason to modify the Katsube et al. network so as to arrive at Applicant's claimed network. It is not clear how such modification

² See Applicant's specification at paragraphs [0052], [0092]-[0093], [0109]-[0110], [0118], [0224] and [0230]-[0247] with Figs. 4A-B, the application being referenced 30.

³ See MPEP 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," (Citations omitted) (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."

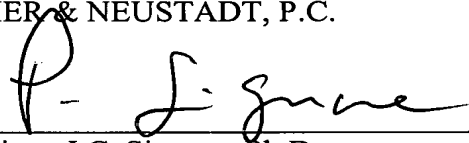
could be achieved without a substantial reconstruction or redesign of the Katsube et al. network.⁴

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-8 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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⁴ See In re Ratti, 270 F.2d 810, 813, 123 USPQ 349, 352 (reversing an obviousness rejection where the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.")